REMARKS

Applicants respectfully request reconsideration and allowance of the clams in the subject application. This amendment is fully responsive to all issues raised in the Office Action mailed September 23, 2005.

Objections

Claim 43 is canceled herein.

Claims 33, 39, 41 and 46 have been amended to obviate the objection.

Rejections Under 35 U.S.C. §112

Claims 31, 37, and 41 have been amended to obviate the rejection.

Claims 30-40

Claims 30, 31, 36 and 37 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,647,415 to Olarig, et al. (hereinafter, "the '415 patent"), or in the alternative as being obvious over the '415 patent. Applicant respectfully traverses these rejections.

The '415 patent cannot anticipate (or render obvious) independent claim 30 because the '415 patent neither discloses (nor even suggests) limitations explicitly recited in independent claim 30. Claim 30 recites "sorting a plurality of data files on the storage device into one or more categories based on at least one characteristic of the data files" and "reallocating a portion of the data in a category of data files when a storage

capacity consumed by the category of data files exceeds a threshold." Claim 36 recites "sort a plurality of data files on a storage device associated with the processor into one or more categories based on at least one characteristic of the data files" and "reallocate a portion of the data in a category of data files when a storage capacity consumed by the category of data files exceeds a threshold."

The Action asserts that the '415 patent discloses these limitations, and cites column 3, lines 10-16 to support the rejection. Applicant disagrees. The cited text reads as follows:

> If a PC's storage space is nearing full capacity, the PC automatically determines which data has been least-recently used (step 204) and automatically moves such amount of data to the network server's storage so as to free up a previously determined percentage or magnitude of storage space on the PC, without notifying the user (step 206).

Nothing in this text discloses (or even suggests) sorting a plurality of data files on the storage device into one or more categories based on at least one characteristic of the data files and reallocating a portion of the data in a category of data files when a storage capacity consumed by the category of data files exceeds a threshold, as recited in claims 30 and 36. Therefore, the '415 patent cannot anticipate (or render obvious) independent claims 30 and 36.

Dependent claims 31-35 and 37-40 depend from claims 30 and 36, respectively, and are allowable at least by virtue of this dependency.

Claims 41-48

Claims 41-48 were rejected under 35 U.S.C. §103(a) as being obvious over the '415 patent, alone or in combination with multiple screen shots referred to in the Action as "Windows 98."

Initially, the rejections are improper *per se* because there is no evidence of record to establish that the screen shots cited in the Action as Windows 98 are, in fact, prior art. A reference qualifies as a "printed publication" for the purposes of 35 U.S.C. §102(a) only upon a satisfactory showing by the Examiner that the document has been disseminated or otherwise made available to the public to the extent that persons interested and ordinarily skilled in the art can locate it. (See, MPEP 2128, quoting *In re Wyer*, 665 F.2d 221 (CCPA 1981)). In this application the Examiner has produced *no evidence whatsoever* to show that the screen shots referred to as Windows 98 have a publication data at all, or were available to the public before the filing date of the present application. In the absence of an evidentiary showing, Windows 98 cannot be cited as prior art.

It is the Examiner's burden to show that screen shots referred to as Windows 98 were *available to the public* prior to the date of the inventions claimed in this application. (*In re Wyer*, 655 F.2d 221 (CCPA 1981)). The examiner must proffer evidence supporting the assertion. Only after the Examiner satisfies this burden does the burden of production shift to Applicants to rebut the rejection. In this application the Examiner has failed to proffer any evidence to establish a publication date for the screen shots referred to as Windows 98. Hence, the rejection is *per se* improper.

Further, even if the Examiner can establish a publication date for the screen shots cited in the Action as Windows 98, the '415 patent, alone or in combination with the screen shots referred to as Windows 98 fails to establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness the Action must establish that all limitations recited in the claim are disclosed or suggested by the cited reference. See, MPEP 2143.03. The '415 patent, alone or in combination with Windows 98, fails to disclose or suggest numerous features recited in each of independent claims 41, and 46, and in the dependent claims.

The Action asserts that the screen shots referred to as Windows 98 disclose a user interface that presents an indicia of an amount of data storage consumed by a category of data files and one or more reallocation operations applicable to a category of data files. Applicants disgree. The screen shots cited in the Action as Windows 98 are a simple schematic illustration of the amount of capacity consumed on a disk drive. The screen shots cited in the Action as Windows 98 provide no description whatsoever regarding categories of data files or reallocation operations applicable to the categories. Hence, the '415 patent, alone or in combination with the screen shots referred to as Windows 98 fails to establish a *prima facie* case of obviousness of claims 41 and 46.

Dependent claims 42-45 and 47-48 depend ultimately from claims 41 and 46, respectively, and are allowable at least by virtue of the dependency.

CONCLUSION

This application is in condition for allowance. Should any issue remain that prevents immediate issuance of the application, the Examiner is encouraged to contact the undersigned attorney to discuss the unresolved issue.

Respectfully Submitted,
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